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10/677,197

10/02/2003

Keith Pound

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EXAMINER

REDMAN, JERRY E

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEITH POUND, KIM MARGERUM
and BENJAMIN MULLINIX

Appeal 2007-4544
Application 10/677,197
Technology Center 3600

Decided: February 13, 2008

Before: TERRY J. OWENS, JENNIFER D. BAHR and
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 The Appellants appeal under 35 U.S.C. § 134 (2002). The
3 Appellants' invention relates to a window lift mechanism of a type that

might be incorporated into the door of an automobile. Claim 1 is representative of the Appellant's claims and reads as follows:

1. A window lift mechanism assembly for a window having at least one attachment member comprising:
 - a cursor adapted to receive the attachment member; and
 - at least one strand disposed within said cursor comprising a locking portion for securing the attachment member within said cursor.

We have jurisdiction under 35 U.S.C. § 6(b) (2002).

The Examiner rejected claims 1, 5, 8-13 and 17-22 under 35 U.S.C. § 102(e) (2002) as anticipated by Kaps (U.S. Patent 6,557,302). The determinative issue with respect to this rejection is whether Kaps discloses a window lift mechanism including a "strand" disposed within a cursor. We reverse the rejection of claims 1, 5, 8-13 and 17-22 under section 102(e).

The Examiner's Answer states that claim 5 stands rejected under 35 U.S.C. § 112, ¶ 2 (2002) as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Appellants regard as the invention. (Ans. 3). The record is unclear whether this rejection was withdrawn by the Examiner prior to the filing of the notice of appeal. We remand this appeal to the Examiner to clarify whether claim 5 stands rejected under section 112, ¶ 2.

1 A. *The Subject Matter of Claims 1, 5, 8-12 and 21 Was Not*
2 *Anticipated by Kaps*

3 Kaps discloses a carrier which couples a window pane to a lifting
4 mechanism for raising or lowering the window pane. (Kaps, col. 1, ll. 6-8).
5 The carrier includes two retaining arms which form a gap for receiving a
6 lower portion of the window pane. (Kaps, col. 3, ll. 24-29). A portion of a
7 retaining arm 21 is missing so as to form a bolt socket having a “V”-shaped
8 guide-in area supported by a resilient web. A guide bevel overlies the guide-
9 in area of the bolt socket to form a hole for receiving a bolt affixed to the
10 window. (Kaps, col. 3, ll. 30-42 and Fig. 1). The other retaining arm 22 has
11 an oblong hole for holding the window bolt. (Kaps, col. 3, ll. 48-50).

12 The Examiner found that “the entire inner surface and projections
13 within cursor 21 and 22” is a “strand” as that term is used in claim 1. (Ans.
14 4). The Appellants contend that the word “strand” as used in claim 1 means
15 “a string, thread or any other ropelike filament.” (Br. 4, citing WEBSTER’S
16 NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE at
17 1798 (The Publishers Guild, New York 1957) (“strand,” entry 4, def. 2)).
18 The Examiner responds that “the [Appellants’] ‘strand’ is not a string, or
19 thread, or ropelike filament. Therefore, the ‘strand’ of Kaps (‘302) is as
20 much of a ‘strand’ as the [Appellants’] so called or defined ‘strand’.” (Ans.
21 4). We disagree.

22 “During examination, ‘claims . . . are to be given their broadest
23 reasonable interpretation consistent with the specification, and . . . claim
24 language should be read in light of the specification as it would be
25 interpreted by one of ordinary skill in the art.’” *In re American Acad. of*
26 *Science Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (quoting *In re*

1 *Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)). We do not believe that the word
2 “strand” as used in claim 1 is susceptible of a reasonable interpretation broad
3 enough to encompass the entire inner surface and projections within a cursor
4 of a window lift mechanism. As the Appellants point out, “there is simply
5 nothing in the specification, drawings, or claims that would be construed by
6 one skilled in the art to support reading the term ‘strand’ as an inner surface
7 of the Kaps clip.” (Reply 2).

8 The Appellants’ specification clearly indicates that the word “strand”
9 as used in claim 1 means a filament. The word “strand” appears only twice
10 in the present specification, each time referring to a clip 22. (*See*
11 Specification 2, ¶ 8 and 4, ¶ 26). Each embodiment disclosed in the present
12 specification includes the clip 22 and each drawing of the application shows
13 an apparently identical clip 22 consisting of a wire or filament bent to form a
14 locking portion and a biasing portion. Since the present specification uses
15 the word “strand” consistently to refer to a filament, the word must be given
16 a similar meaning in the claims. The “entire inner surface and projections
17 within cursor 21 and 22” are not a “strand” as that term is used in claim 1,

18 The Examiner identifies no other structure disclosed by Kaps which
19 might correspond to the term “strand” as used in claim 1. On the record
20 before us, the Appellants have shown that the Examiner erred in rejecting
21 claim 1. Since claims 5, 8-12 and 21 depend from claim 1, the Appellants
22 have shown that the Examiner erred in rejecting those claims under
23 section 102(e) as well.

1 *B. The Subject Matter of Claims 13, 17-20 and 22 Was Not*
2 *Anticipated by Kaps*

3 Claims 13 and 22 recite a door module assembly including a cursor
4 and “at least one continuous strand disposed within said cursor”
5 Claims 17-20 recite a cursor assembly including a cursor and “at least one
6 strand supported by said cursor” The Examiner rejected claims 13, 17-
7 20 and 22 on the basis of the same findings relied on to reject claim 1. (Ans.
8 3-4). That is, the Examiner found that “the entire inner surface and
9 projections within cursor 21 and 22” is a “strand” as that term is used in
10 claims 13, 17-20 and 22. As discussed in the previous section, the present
11 specification uses the word “strand” consistently to refer to a filament.
12 Consequently, the word must be given a similar meaning in claims 13, 17-20
13 and 22. Given its broadest reasonable interpretation, the word “strand” as
14 used in claims 13, 17-20 and 22 does not include “the entire inner surface
15 and projections of cursor 21 and 22.” On the record before us, the
16 Appellants have shown that the Examiner erred in rejecting claims 13, 17-20
17 and 22.

18

19 **REMAND TO THE EXAMINER**

20 Pursuant to 37 C.F.R. § 41.50(a)(1) (2007), we remand the application
21 to the Examiner for clarification of the status of claim 5.

22 In a Final Office Action mailed June 15, 2005, the Examiner rejected
23 claims 5, 7, 11 and 20 under section 112, ¶ 2. In an Advisory Action mailed
24 August 22, 2005, the Examiner entered pending appeal amendments to the
25 claims rejected under section 112, ¶ 2. In the same Advisory Action, the
26 Examiner checked a box stating that “Applicant’s reply has overcome the

1 following rejection(s): 35 U.S.C. 112 second paragraph.” The Brief of
2 Appellants does not refer to any rejections under section 112, ¶ 2 and the
3 Examiner’s Answer informs us that “the [Appellants’] statement of the
4 grounds of rejection to be reviewed on appeal is correct.” (Br. 3; Ans. 2).
5 Despite this, the Examiner’s Answer states that claim 5 stands rejected under
6 section 112, ¶ 2 as being indefinite for failing to particularly point out and
7 distinctly claim the subject matter which the Appellants regard as the
8 invention. (Ans. 3).

9 It is ORDERED that if the Examiner maintains the rejection of claim
10 5 as being indefinite, the Examiner must furnish a Supplemental Examiner’s
11 Answer stating the rejection of claim 5 under section 112, ¶ 2 as a new
12 ground of rejection and provide the Appellants with the opportunity to
13 respond as provided in 37 C.F.R. § 41.50(a)(2) (2007).

14
15 DECISION

16 The rejection of claims 1, 5, 8-13 and 17-22 under 35 U.S.C. § 102(e)
17 is reversed. The appeal is remanded to the Examiner to clarify the status of
18 claim 5.

19 This remand to the Examiner pursuant to 37 CFR § 41.50(a)(1) (2007)
20 is made for further consideration of a rejection. Accordingly, 37 CFR
21 § 41.50(a)(2) (2007) applies if a supplemental examiner's answer is written
22 in response to this remand by the Board.

23 Section 41.52(a)(2) states in part:

24 (2) If a supplemental examiner’s answer is written in response to a
25 remand by the Board for further consideration of a rejection pursuant to
26 paragraph (a)(1) of this section, the appellant must within two months from

1 the date of the supplemental examiner's answer exercise one of the
2 following two options to avoid sua sponte dismissal of the appeal as to the
3 claims subject to the rejection for which the Board has remanded the
4 proceeding:

5 (i) Reopen prosecution. Request that prosecution be reopened by
6 filing a reply under §1.111 of this title . . .

7 (ii) Maintain appeal. Request that the appeal be maintained by filing
8 a reply brief as provided in § 41.41. . . .

9
10 REVERSED AND REMANDED

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14 vsh
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